

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

September 18, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-2353

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

GORDON WIPPERFURTH AND CAMILLE WIPPERFURTH,

PLAINTIFFS-APPELLANTS,

v.

**MARVIN KRZYKOWSKI, BOARD OF ADJUSTMENT, WOOD
COUNTY AND WOOD COUNTY,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Wood County:
JAMES M. MASON, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Deininger, JJ.

PER CURIAM. Gordon and Camille Wipperfurth appeal from an order affirming a decision by the Wood County Board of Adjustment, which had denied their application to place a camper on the floodplain of the Wisconsin River. We affirm.

Wood County originally enacted a floodplain zoning ordinance in 1978. In September 1993, the County repealed that ordinance and simultaneously enacted a new one, as part of a process of codifying its ordinances. Some parts of the ordinance were changed in the process of repeal and reenactment. In September 1994, the Wipperfurths applied for a permit to place a camper on their property. The zoning administrator denied the permit, and that decision was affirmed by the board of adjustment. On certiorari review, the circuit court affirmed. The Wipperfurths appeal.

The parties agree that our review is *de novo*. The Wipperfurths do not dispute that the permit would be denied under both the 1978 and 1993 ordinances, which forbid structures “designed for human habitation.” Instead, the Wipperfurths argue that no ordinance was in effect at the time of their application. Their argument is based on certain provisions of WIS. ADM. CODE ch. NR 116.

That chapter, in general, requires municipalities to adopt floodplain zoning ordinances which meet certain standards. The Department of Natural Resources shall issue a certificate of approval to a municipality upon a finding that the adopted floodplain zoning ordinance meets the provisions of the chapter. WIS. ADM. CODE § NR 116.22(2). “Official amendments” are required for any changes in a floodplain zoning ordinance, and no such amendments may become effective until they have been approved by the department. WIS. ADM. CODE § NR 116.21(6)(a) and (6)(e).

The County submitted the 1993 ordinance to the department for review. In a letter dated August 30, 1994, shortly before the Wipperfurths’ permit application, the department informed the County that it had reviewed “the proposed amendments” to the ordinance and that it required three changes, none of

which is relevant to the Wipperfurths' application. The letter continued: "In all other respects, I find the ordinance to meet or exceed state and federal minimum standards. When you have made these required changes, please send a copy to me, along with [certain formal requirements]. I will then issue a letter of approval." The department ultimately issued such a letter in December 1994, after the Wipperfurths' permit application.

The Wipperfurths argue that at the time of their application, no zoning ordinance was in effect because the 1978 one had been repealed and the department had not yet issued its certificate of approval for the 1993 ordinance. The Wipperfurths' argument is, in essence, that the 1993 ordinance must be treated as a wholly new zoning ordinance, no part of which was effective until the entire ordinance was approved by the department.

We reject this argument. We regard the 1993 action as an amendment of the 1978 ordinance. As a practical matter, it can be easier to amend a lengthy or complicated statute by repeal and recreation, rather than by legislation which would make numerous deletions and additions throughout the statute. We see nothing in the rules here, and the Wipperfurths have cited nothing, that would require a municipality to use the latter procedure when the former is a more effective way to make the desired changes. Although the device used here was repeal and recreation, the 1993 ordinance was, in its ultimate effect, an amendment of the 1978 ordinance. The Department of Natural Resources apparently reached the same conclusion, since it considered itself to be reviewing "amendments," as stated in its August 1994 letter to the County.

While the rules provide that amendments are not effective until approved by the department, *see* WIS. ADM. CODE § 116.21(6)(e), nothing in the

rules even remotely suggests that the unamended parts of the ordinance cannot be enforced while awaiting department approval of amendments. As we stated above, the prohibition on structures designed for human habitation appeared in both the 1978 and 1993 versions of the ordinance and was not amended. Therefore, we conclude that this provision was in effect at the time of the Wipperfurths' application. The Wipperfurths do not argue that the board erred in its application of this language to their permit, and therefore we affirm the denial of their application.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

